

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. ND-2008-4-A - ORDER NO. 2008-571
AUGUST 19, 2008

IN RE: Reciprocal Plant Operating Agreement)	ORDER GRANTING
between Kapstone Charleston Kraft, LLC)	CONFIDENTIAL
and MeadWestvaco South Carolina, LLC)	TREATMENT OF
Pursuant to S.C. Code Ann. § 58-3-240)	CONTRACT
)	
)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Motion for Confidential Treatment of Contract (“the Motion”) filed by Kapstone Charleston Kraft LLC (“KS-SC” or “the Company”). In its Motion, KS-SC seeks confidential treatment by this Commission of a Reciprocal Plant Operating Agreement (“RPOA”) being filed by KS-SC to satisfy the provisions of S.C. Code Ann. Section 58-3-240 (Supp. 2007). The RPOA has been filed under seal because of what KS-SC terms the “competitively sensitive information contained therein.”

On July 1, 2008, KS-SC purchased MeadWestvaco South Carolina LLC’s (“MV-SC’s”) unbleached uncoated kraft mill located in North Charleston, South Carolina (“the Mill”). The two parties executed the RPOA, also effective on July 1, 2008, in order to memorialize their agreement for the ongoing interchange of chemicals and services between KS-SC and MV-SC. MV-SC is continuing to operate its specialty chemicals business adjacent to the Mill, including a specialty chemicals facility and a crude tall oil facility. These facilities are highly interconnected and exchange a number of goods and

services. Because the RPOA addresses the provision of certain utility services, KS-SC is filing the RPOA with the Commission and the Office of Regulatory Staff (“ORS”) for information purposes, pursuant to S.C. Code Ann. Section 58-3-240 (Supp. 2007), in order to satisfy the requirements of the “industrial park exemption” found therein.

According to KS-SC, the RPOA contains competitively sensitive information entitled to trade secret protection, and the information fits squarely within the definition of a “trade secret” under the South Carolina Trade Secrets Act. A “trade secret” is defined in S.C. Code Ann. Section 39-8-20(5)(a) as information that “(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public...and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” KS-SC asserts that the RPOA contains proprietary and competitively sensitive information, and therefore this contains “trade secrets” entitled to confidential treatment. Among other things the RPOA describes in detail the assets owned and operated by the parties, the operations of these facilities, the products produced and exchanged by and between the parties, and certain costs associated with operating the facilities. KS-SC states that all of this information is competitively sensitive. Further, KS-SC and MV-SC undertake considerable efforts to maintain the secrecy of the information contained in the RPOA, and the information is not publicly disseminated. It is stated that they would suffer substantial direct harm if the information contained therein is made publicly available.

KS-SC also points to the South Carolina Freedom of Information Act (“FOIA”) as providing “trade secret” protection for the RPOA. S.C. Code Ann. Section 30-4-40(a)(1)

(Supp. 2007) states that a public body may exempt “trade secrets” from disclosure, which include “commercially valuable plans” used “for the making, preparing, compounding, treating, or processing of trade commodities obtained from a person...” The RPOA details numerous facilities, assets, and processes by which both KS-SC and MV-SC produce various products. According to KS-SC, this RPOA and its contents are “commercially valuable” to both companies.

ORS does not object to the Motion.

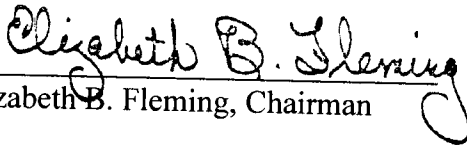
Accordingly, KS-SC requests that the RPOA be ruled exempt from public disclosure and provided confidential treatment in accordance with the cited statutes. We have examined this matter, and have determined that the Motion should be granted. We agree that the information described in the RPOA constitutes “trade secrets,” both under the South Carolina Trade Secrets Act and FOIA, in that the RPOA describes assets owned, the operation of the facilities, and the products produced, along with the costs of operating the facilities. The RPOA shall therefore be exempt from public disclosure and will be provided confidential treatment.

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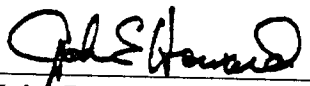
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This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman

(SEAL)